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IN THE HIGH COURT OF JUDICATURE FOR RAJASTHAN
AT JAIPUR BENCH, JAIPUR

O R D E R

S.B. CIVIL WRIT PETITION NO. 2034/2004

RATAN LAL

Vs.

ADDITIONAL DISTRICT JUDGE NO.2, SIKAR & ORS.

DATE: 19.11.2007.

HON'BLE MR. JUSTICE K.S. RATHORE

Mr. Mahendra Shah for the petitioner.

Mr. R.K. Agarwal for the respondent No.3

Mr. Akhil Simlote for the respondent Nos. 4/1 to 4/4.

This writ petition is directed against the judgment cum decree dated 09.07.2003 passed by the Civil Judge (Jr. Division), Sikar in Civil Suit No. 340/99 in favour of respondent No.3 Smt. Madhumati against Ramkaran, tenant in the suit premises.

In the year 1982, co-parcaner brother Shri B.L. Sethi expired issue-less without leaving any legal heirs except the petitioner, therefore, the petitioner became automatic sole owner of the properties under the possession of Shri B.L. Sethi. Though in 1979, a preliminary decree was passed by the Court of Civil Judge (Jr. Division), Sikar in Case No. 3/76 in favour of the petitioner regarding the properties which are in possession of the petitioner and for remaining

properties, a suit is pending for deciding the title. In the aforesaid suit, the petitioner filed application for necessary amendment on account of subsequent event of death of co-parcaner Shri B.L. Sethi in the year 1982 and to declare him the owner of the sole properties.

The amendment was refused by the trial Court but the same came to be permitted in the revision petition by this Court which has been challenged by power of attorney holder Shri Mahaveer Prasad before the Hon'ble Apex Court in S.L.P., wherein the Hon'ble Apex Court vide its order dated 10.08.2001, stayed further proceedings of the trial Court.

The petitioner challenged the order and decree passed by the Court below on 09.07.2003 in suit No. 340/99 filed by Smt. Madhumati against the tenant and the same was decreed in favour of Smt. Madhumati.

During pendency of the suit, the petitioner also moved an application under Order 1 Rule 10 CPC for impleadment as party respondent in Suit No. 340/99, which was rejected by the Civil Judge (Jr. Division), Sikar vide its order dated 18.10.2001 and the same has not been challenged by the petitioner and becomes final.

Now the petitioner at the appellate stage, has moved an application under Order 41 Rule 1 r/w Section 151 CPC to permit him to file appeal against the decree passed in favour of respondent No.3 Smt. Madhumati on 09.07.2003 and vide order dated 17.11.2003 the aforesaid application was rejected by the Court below observing that the suit in question is with regard to eviction and recovery of rent.

Learned counsel for the petitioner submits that the suit for partition of the property is still pending wherein the Court below has to decide the rights and ownership of the property in question as the petitioner submits that admittedly he is the owner of half of the share of the property and on account of death of co-parcaner Shri B.L. Sethi, he becomes the sole owner of the property. Since this question is still pending before the Civil Court, the decree of eviction from land which has been passed in favour of respondent No.3 Smt. Madhumati considering her the owner of the property, will adversely affect the rights of the petitioner, therefore, the petitioner wants to challenge the decree passed in favour of respondent No.3 Smt. Madhumati and seeks permission to file appeal against the decree wherein the petitioner was not party

respondent.

Learned counsel for the respondents has strongly controverted this fact and has not disputed the fact that the suit for partition is still pending and it is also stated that the application for impleadment as party respondent in the suit in question was dismissed in the year 2001 and the same has not been challenged by the petitioner and becomes final and now at this stage, the petitioner wants to challenge the decree dated 09.07.2003 passed in favour of respondent No.3 Smt. Madhumati by way of this writ petition under the garb of rejection of application for allowing the petitioner to file appeal against the decree.

It is further submitted that challenging this decree dated 09.07.2003, the tenant has preferred an appeal before the Civil Court and the same is pending.

Learned counsel Mr. Simlote appearing for the legal heirs of deceased tenant Ramkaran has also opposed the petition and submitted that he is not interested to continue with the tenancy of the shop in question and further submitted that on account of interim order dated 24.05.2004 passed by this Court by which the decree has been kept in abeyance, his rights

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are seriously affected and he is not willing to continue as tenant.

I have heard rival submissions of the respective parties and carefully gone through the impugned decree dated 09.07.2003 as well as the order dated 17.11.2003.

It is no doubt that during pendency of the suit No. 340/99, the petitioner moved an application for impleadment as party respondent under Order 1 Rule 10 CPC and the same was rejected by the Civil Court vide order dated 18.10.2001 and admittedly this order has not been challenged by the petitioner and becomes final. Now in the year 2003, the petitioner moved regular appeal along with application under Order 41 Rule 1 r/w Section 151 CPC for seeking permission to file appeal and the same was dismissed by the Additional District Judge No.2 Sikar vide its order dated 17.11.2003, against which this writ petition has been preferred by the petitioner on the grounds as stated herein above.

This fact has not been disputed that the petitioner has preferred a suit for partition and the same is pending. Since the petitioner has already redressed his grievance before appropriate forum and

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the petitioner has not chosen to challenge the order of rejection of his application for impleadment as party dated 18.10.2001 and only moved application for seeking permission to file appeal and it is not disputed that tenant has already filed an appeal against the decree which is still pending.

Having gone through the order dated 17.11.2003 passed by the Additional District Judge No.2, Sikar, by which the application under Order 41 Rule 1 r/w Section 151 CPC has been rejected, this Court find no illegality or error apparent on the face of the record. It is always for the Civil Court to decide the suit which is pending, independently on merits without influencing with the observations made in the impugned decree dated 09.07.2003 and the impugned order dated 17.11.2003, but in any case, this Court find no merit in the writ petition.

Consequently, the writ petition fails and the same stands dismissed.

The interim order dated 24.05.2004 granted by this Court stands rejected. The stay application also stands dismissed.

(K.S. RATHORE),J.

/KKC/